

Means to improve access to justice and legally empower victims of domestic violence: An empirical legal study on legislation and legal offices in Buenos Aires, Argentina

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Means to Improve Access to Justice and Legally Empower Victims of Domestic Violence: An Empirical Legal Study on Legislation and Legal Offices in Buenos Aires, Argentina^{*}

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Abstract

The purpose of this study is to understand how recent legal reforms and the creation of legal offices in Argentina may improve access to justice and legally empower victims of domestic violence. The paper looks into the way the judicial system developed to provide suitable options for victims of domestic violence to gain access to justice and solve their conflicts. It uses a legal empowerment framework composed of three levels: normative, institutional and individual. The paper bases the analysis on the existing regulations, and an empirical study conducted with those working for the public institution, and with victims of domestic violence that accessed to those institutions seeking for assistance. The paper gives a comprehensive approach and provides reflections on what aspects of the laws and institutions are actually being of benefit for victims of domestic violence.

Keywords: Access to Justice – Argentina – Domestic Violence – Law Reform – Legal Empowerment

JEL Classification: K36, K14, K41, L38

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I. Introduction	1
II. Methodology	4
III. Results.....	5
A. Normative Level.....	5
1. Constitutional & International.....	5
2. Federal	9
3. Local.....	11
B. Institutional Level.....	14
1. Creation of Legal Offices.....	14
2. Lessons from Daily Activities	23
C. Individual Level	29
1. Channels of Access	29
2. Conflict Resolution.....	33
IV. Conclusion	34
Bibliography.....	37

I. INTRODUCTION

Argentina experienced significant changes in its policies on access to justice for vulnerable groups during the last decade. Access to justice is the vehicle whereby other rights are conveyed,¹ and hence a right that ought to be granted to every member of society regardless of economic and social conditions. The right to access to justice has been largely recognised in many normative frameworks, at a city, national and international level. It therefore reaffirms that “justice” is a social value and that the means to access to that value are in continuous contemplation by policymakers.

Laws represent an aspiration, whereas institutions represent materialisation. While previously laws and institutions considered access to justice for the entire community, today there is a tendency to address it in a tailor-made way, i.e., contemplating the difficulties that specific groups face to access. In Argentina, victims of domestic violence (Victims) represent an example of a group that the laws and institutions provided with a tailor-made

¹ See, for example, an interview to Santiago Otamendi *available at* <http://www.fiscalias.gob.ar/informacion/canal-de-videos>.

approach. This paper contemplates this phenomenon and analyses how tailor-made laws and institutions can improve access to justice and legally empower Victims.

Departing from the assumption that access to justice is a necessary right to trigger the enactment of other rights; legal empowerment is used to understand how those who had access experienced that transit. Legal empowerment is hence understood as a twofold development: on the one hand, it is the process that people undergo when accessing to the law (specifically contemplating on how persons gain control over those problems that are affecting their well-being), and, on the other hand, it is a means to an end by putting into action specific laws and legal offices.² For a better analysis of legal empowerment, this paper studies the phenomenon at three levels: normative, institutional and individual.³ The normative level introduces recent developments in the legal framework that focus on Victims and on improving their access to the law and their chances to solve conflicts. The institutional level studies the current public institutions working on facilitating access to justice and conflict resolution. The individual level collects experiences from Victims and analyses how they perceive their access to justice and to what extent the access contributes to solve their conflicts.

The overarching research question that the paper intends to answer is how the recent legal reforms and the creation of legal offices in Argentina improve access to justice and legally empower Victims. To answer this research question, the study is structured in the following way: the first section addresses how the empirical study was conducted to answer the research question. The second section presents results on the three levels of legal empowerment: normative, institutional and individual. The normative level presents, from a policy perspective, the governmental aspiration for improving access to justice, conflict resolution and violence against women and a map of proposed means to arrive to that aspiration.⁴ The institutional level explains firstly, the creation of legal offices and the

² FRIDE, *Empowerment* (Development Backgrounder FRIDE 2006).

³ This framework is inspired by the Legal Empowerment framework proposed by USAID, understanding legal empowerment at a cycle composed by four stages: rights enhancement (contemplates the developments in the legal system towards contemplating the needs of the vulnerable population), rights awareness (contemplates efforts to improve the understanding of rights), rights enablement (looks into the channels available to people to complete and submit necessary documentation needed to claim for rights), and rights enforcement (the actual putting into practice that right that has been claimed). John W Bruce *et. al.*, 'Legal Empowerment of the Poor: From Concepts to Assessment' (USAID, 2007).

⁴ Dunn, W.N., *Public Policy: An Introduction* (Upper Saddle, NJ: Pearson, 2008) 3.

strategies implemented by one of the offices towards assuring access to justice and the resolution of conflict with an accusatory approach and alternative resolution practices. Secondly, it presents the results of in-depth interviews with members of the legal office selected for the case study. The analysis of those interviews explains the impact of the assistance provided, the challenges faced by Victims, and the role of law for conflict resolution from the eyes of the providers. The individual level presents first conclusions of in-depth interviews done to Victims who, at the time of starting the study, were already experiencing the services offered by legal offices. These in-depth interviews explain how Victims perceive their legal empowerment. Finally, the last section of the paper merges the three levels and offers reflections on how the interplay of laws and offices results in a new tailor-made policy to improve access to justice and legal empowerment.

II. METHODOLOGY

Qualitative methodologies were used to carry out this research. The research took place in Argentina at the Public Prosecutor's Office for the City of Buenos Aires (Office). Fieldwork was done during three research-stay periods: (i) Period I: 10.12.2012 – 30.01.2013; (ii) Period II: 27.06.2013 – 15.08.2013; and (iii) Period III: 14.01.2014 – 28.02.2014. The empirical data collected during the research stays served as guideline to develop the debate of the normative level, and as data for the study of the institutional and individual levels. The normative level used descriptive methodologies and empirical data to highlight the relevance of the different developments of the laws. This level looks at the changes in the legal framework since 1994 – 2014, looking mainly at the right to access to justice, the right to a remedy; the right of women to live free of violence and discrimination, and the right to democratic participation.

The institutional level analyses the institutional designs which started in 2007. It presents results of observations and in-depth interviews with chief operators at the Office. Chief operators are considered to be those agents in charge of the design, implementation and evaluation of public policies at the Office (Chief Operators). The sample was composed of the Attorney General, the Access to Justice and Human Rights General Secretariat (General Secretariat), and the director of each of the four divisions coordinated by the General Secretariat. Interviews were conducted during Periods I, II and III. This level also

includes experiences of those service providers, which are members of the Witness and Victims Assistance Office (OFAVyT), a unit of the Office, that assists victims in a daily bases (Service Providers). An on-line interview was used to collect data from Service Providers. The on-line interview was composed of closed ended questions followed by opened ended questions. The interview had a 44% response rate. This analysis presented under the institutional level presents preliminary results.

The individual level is composed by Victims who accessed the Office and who voluntarily accepted to participate in this study. Victims were interviewed twice, with a six months interval in between. Fifty-four Victims compose the sample, of which 31 were interviewed twice. For the purpose of this working paper, a selection of interviews was analysed, hence, these paper presents preliminary results.

III. RESULTS

A. Normative Level

1. Constitutional & International

The study of the normative level starts with the analysis of the Argentine Constitution and Human Right conventions. These bodies of legislations give the value premises under which the Argentine society is conformed. Human Rights conventions played a key role in extending already recognised rights to the Argentine population, and particularly to vulnerable groups. The right to access to justice is recognised in the text of the Argentine Constitution in article 18 when protecting “the defence by trial of persons and rights.”⁵ This right is extended with the Human Rights conventions and the incorporation of the principle of full equality stressing the inclusive element of everyone deserving the protection of rights. That protection of rights, obtained when an effective and enforceable remedy is granted, can be achieved by means of a fair trial. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁶ and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against

⁵ Haydee Birgin and Beatriz Kohen, ‘Introducción. El Acceso a la Justicia como Derecho’, *El acceso a la justicia como garantía de igualdad: instituciones, actores y experiencias comparadas* (Editorial Biblos 2006) 19.

⁶ See the text of the Convention on the Elimination of all Forms of Discrimination against Women (hereinafter, CEDAW), available at, <http://www.un.org/womenwatch/daw/cedaw/>.

Women (Convention of Belém do Pará)⁷ addresses access to justice particularly for victims of domestic violence. These two treaties give guidance to Argentina to respond to its international duty to implement public policies to eradicate violence against women by providing accurate channels to allow Victims to overcome obstacles to access to justice and to ensure a responsive judiciary to the specificities of this illicit act/crime.⁸

People access to justice in search of a solution to their problems, hence, principles on access to justice are closely linked to the right to a remedy. The text of the Argentine Constitution does not expressly mention the right to a remedy, but it mentions, in article 18, the right to due process. This article, in line with articles found in other jurisdictions, focuses on assuring that the accused is not punished without fair trial.⁹ However, there is no specific article that addresses the right of the victim to a remedy. This absence is overcome with the incorporation of Human Rights conventions, which expressly recognise the right of the victim to a just and an effective remedy provided by a competent judiciary.¹⁰ Alternative dispute resolution mechanisms are introduced as a way to broaden the spectrum of possibilities for parties to achieve conflict resolution and a tailor-made remedy.¹¹ The Convention of Belém do Pará requests member states to establish “fair and effective legal procedures for women who have been subjected to violence which include, among others,

⁷ See the text of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter, Convention of Belém do Pará), *available at*, <http://www.oas.org/juridico/english/treaties/a-61.html>.

⁸ Ibid art 7(d), 8(d); CEDAW art 25 *supra note* 7; Access to Justice for Women Victims of Violence in the American art. xviii, 17, 24 *available at*, <http://www.cidh.org/women/Access07/exesummary.htm>.

⁹ Fair trial is understood as the existence of a concrete accusation, for specific facts, with the possibility for the accused to defend, the opportunity to prove the facts alleged by the parties and the decision by the competent judge in reasonable time and based on the facts that have been proven and the applicable rights, *see*, Luis Cevasco, *Derecho Procesal Penal de la Ciudad Autónoma de Buenos Aires* (AD-HOC 2009) 15–16.

¹⁰ UDHR (n 8) art. 8; ICCPR (n 8) art. 2(3); ICERD (1969) 2106 UNGA art. 6; Pact of San José art. 25; Convention of Belém do Pará art 7(g) *supra note* 8. With this open statement the international treaty is recognising that states have to apply measures which are accordance with their society. No set of close measures can be given, because this would not contribute to achieving the ultimate goal. Furthermore, *ICC Statute* (2002) A/CONF.183/9 UNGA art 17 understand for remedy the “restitution, compensation and rehabilitation.” The effective remedy requires prevention, “investigation, trial and redress” on the right that has been violated, *see ICC Statute* art 17; Convention of Belém do Pará art 7(b) *supra note* 8; and Pact of San José art 8 and art 25.

¹¹ See the text of the Brasilia Regulations regarding Access to Justice for Vulnerable People, *available at*, <http://www.osce.org/odihr/68082?download=true>.

protective measures, a timely hearing and effective access to such procedures.”¹² Domestic violence cases require an immediate and temporary remedy and a long term remedy. The immediate and temporary remedies (e.g., precautionary measures, temporary child support) provide Victims with economic and safety resources to cope with the absence of the accused in the family dynamics and to be able to achieve a long term remedy. Current legislation across jurisdictions understands that the remedy is achieved when a full repair of the damage is present. The full repair of the damage extends the legal field and requires a holistic and multidisciplinary treatment of the Victim, broadening the legal remedies (e.g., child support, divorce, probation or incarceration) to welfare, economic and psychological health oriented remedies.¹³ Legal representation is recognised as a means to effectively guarantee the protection of rights.¹⁴ According to international documents, the legal assistance provided to Victims optimally should be undertaken by specialised attorneys.¹⁵ A responsive action from the state, materialised in an accurate investigation, is not only related to the right of the Victim to a remedy, but also to the general society¹⁶ that sees “evidence of willingness by the state, as the representative of the society, to take effective action to sanction such acts.”¹⁷ This is of much relevance in countries, such as Argentina, with a patriarchal tradition which explains the social acceptance, for many years, of the violence against women.¹⁸

CEDAW and the Convention of Belém do Pará were especially relevant for Argentina when implementing public policies to eradicate violence against women. These international documents specifically address the right of women to live free of violence and the role of the state in procuring accurate mechanisms for Victims to benefit from a judicial

¹² Convention of Belém do Pará art 7(f) *supra* note 8.

¹³ See the text of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) art 10, *available at*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

¹⁴ Federico Andreu-Guzmán and Christian Courtis, ‘Comentarios sobre las 100 Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad’, *Defensa Pública: Garantía de Acceso a la Justicia* (La Ley 2008) rule 28.

¹⁵ Brasilia Regulations Regarding Access to Justice for Vulnerable People *supra* note 12 rule 29.

¹⁶ Convention of Belém do Pará art 7(e) *supra* note 8.

¹⁷ See the decision of the Inter-American Commission on Human Rights in *Maria da Penha Fernandes (Brazil)*, paragraph 56, *available at*, <https://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Fondo/Brasil12.051.htm>

¹⁸ Montserrat Comas de Argemir, ‘Violencia de Genero: Normativa Internacional para Combatirla y Propuestas Legales en España’, *Defensa Pública: Garantía de Acceso a la Justicia* (La Ley 2008) 279.

system that dealt with the specificities of their problems.¹⁹ Additionally, violence against women is understood, by these documents, as a manifestation of a discriminatory act.²⁰ The right of women to live free of violence, therefore includes “the right of women to be free from all forms of discrimination; and the right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.”²¹ Discrimination against women can also lead to social and institutional obstacles towards access to justice and claim of rights.²² Hence, the discriminatory factors in different communities can be assessed in the way the judiciary and officials address domestic violence cases.²³ The discrimination is therefore reduced when a state introduces policies aimed at facilitating access to justice and conflict resolution to those who suffer violence.²⁴

The right to democratic participation of women developed slowly in Argentina. Women gained the right to vote in 1947,²⁵ and in 1991 a Gender Quota Law²⁶ forced different sectors to include women’s representation. In 1994, article 37 of the Argentine Constitution reaffirms that the “suffrage shall be universal, equal, secret and compulsory” and assures the equality of opportunities for men and women to elective and political party positions with the inclusion of positive actions in the corresponding regulations. The Convention of Belém do Pará in article 7 introduces the national duty to adopt measures, e.g., legislations, to give effect to the goals of the convention.²⁷ To increase the quality and effectiveness of public policies, channels of social participation need to be improved, as a means to allow women to voice their needs.

¹⁹ Convention of Belém do Pará art 7(d) and 8(d) *supra* note 8; CEDAW art 25, *supra* note 7, Access to Justice for Women Victims of Justice in the Americas (2007) art xviii, 17, 24.

²⁰ CEDAW General Recommendations Nos 19 and 20 (1992) UN HRTB 1; General Secretariat Organization of American States (n 11) 21.

²¹ Convention of Belém do Pará art 6 *supra* note 8.

²² Brasilia Regulations Regarding Access to Justice for Vulnerable People *supra* note 12 rule 17.

²³ General Secretariat Organization of American States (n 11) 4.

²⁴ Comas de Argemir (n 21) 283.

²⁵ See the text of Law 13010, available at, www.infojus.gob.ar

²⁶ See the text of Law 24012, available at, www.infojus.gob.ar

²⁷ Convention of Belém do Pará art 7(h) *supra* note 8

2. Federal

The federal level of analysis is composed by federal laws delimitating on how to deal with certain social concerns. For this reason, the law provides the recognition of rights and ways to exercise rights. Recent legislative developments tend to address the rights of particular groups, instead of the rights of the entire society. An example of the latter is reflected by the laws addressing the problem of violence against women.

To eradicate violence against women, the laws recognise access to justice as an important right to be granted. The way this right of access to justice is recognised is responsive to the particularities of those victims of violence who decide to exercise their entitlements.²⁸ Argentina experienced an early start in that respect by dealing with the right to access to justice in situations of family violence. Law 24417 of 1994²⁹ was the first federal and comprehensive regulation against family violence. This law defines domestic violence as that which occurs within family members without differentiating genders. The law establishes the procedural baseline and judicial competency.³⁰ Article 1 states that judges with competency to hear family matters can also receive family violence petitions, in a written or oral format. Law 26485 of 2009 reassures and extends the previous statements towards access to justice. The new law includes a gender perspective to violence at large, and violence within the family. It extends the points of access to submit a claim and allows all judges, even those without competency, to hear in domestic violence cases, to receive the petition, and to grant preventive measures (e.g., restraining orders).³¹ Access to justice is considered in a broad sense, not limiting it to access to courts.³² The law calls for the implementation of public policies by the three branches, at federal and provincial level, to assure a free, expeditious, transparent and efficient process to get access to justice.³³

The law also promotes the creation of services to provide free and multidisciplinary assistance and a comprehensive remedy, allowing Victims to exercise the right to a remedy.³⁴

²⁸ General Secretariat Organization of American States, *Access to Justice for Women Victims of Violence in the Americas* (2007) 122.

²⁹ See the text of Law 24417, *available at*, <http://www.infojus.gob.ar/documentDisplay.jsp?guid=123456789-0abc-defg-g37-93000scanyel>.

³⁰ *Ibid* art. 1.

³¹ Law 26485, *supra* note **Error! Bookmark not defined.**, at art. 22.

³² *Ibid* art. 11(5.1.a).

³³ *Ibid* arts. 7(c) and 20.

³⁴ *Ibid* arts. 9(d) and 16(a).

Private legal representation, however, is still considered to be an important element of the right to access to justice and to a remedy.³⁵ The National Council of Women is instructed to promote free and multidisciplinary assistance, and to start a free phone line to assist and a service guide³⁶ to inform Victims. The service guide gives a comprehensive approach to the problem and includes referrals to police stations, hospitals, courts, legal assistance, psychological assistance, multidisciplinary assistance, family assistance and child assistance. To assess the damage (e.g., physical, physiological, economic), the judge can request a multidisciplinary report from a specialised public office³⁷ and provide victims with a comprehensive remedy.³⁸ Victims, hence, can obtain protective (e.g., restraining orders) and security measures (e.g., having a policeman at the house door),³⁹ have the accused ordered to stop performing the violent acts,⁴⁰ and obtain an order to protect the assets of Victims (e.g., order an inventory of the community property and personal property).⁴¹ To protect the stability of Victims and their capacity to overcome, the judge can provisionally exclude the accused from the family home, regardless of ownership, and allow Victims to temporarily stay in the property.⁴² If there are children involved, temporary child support⁴³ and temporary suspension of visits to the children can be also granted.⁴⁴

Law 26485 defines violence against women as a violation of the right of women to live free of violence. CEDAW and the Convention of Belém do Pará serves as inspiration and guideline to the approach the Argentine law gives to violence against women. The new law emphasises the inequality of power and discrimination, which has an impact on the life of women.⁴⁵ The inequality of power has its roots in the historical sociocultural stereotypes on the role of women in the family and in society.⁴⁶ Law 26485 contemplates a

³⁵ OC-11/90 Excepciones al Agotamiento de los Recursos Internos (*art 461, 462.a y 46.b Convención Americana sobre Derechos Humanos*) [1990] OC-11 (Inter-American Court of Human Rights) [28]; Andreu-Guzmán and Courtis, Comentarios sobre las 100 Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad', *Defensa Pública: Garantía de Acceso a la Justicia*, 54.

³⁶ 'Service Guide' (<http://www.cnm.gov.ar/GNR/GuiaNacionalDeRecursosArgentina.html>, 18 June 2014).

³⁷ Ibid art 29; and its Executive Order 235/96.

³⁸ Law 26.485 art 3(h), text available at, www.infojus.gob.ar.

³⁹ Ibid art 26(a.1)(a.6).

⁴⁰ Ibid art 26(a.2)(a.3).

⁴¹ Ibid art 26(b.1)(b.9).

⁴² Ibid art 26(b.2)(b.3).

⁴³ Ibid art 26(b.5).

⁴⁴ Ibid art 26(b.7)(b.8).

⁴⁵ Ibid art 4.

⁴⁶ Executive Order 235/96 art 4 *supra note*, 37.

comprehensive view of violence against women, including a broad definition under article 4,⁴⁷ and has as its goal the elimination of stereotypes about unequal power relation between men and women in the private and public sphere. To tackle the problem of violence against women, the law distinguishes and defines different ways and forms in which violence can be performed: physical, physiological, sexual, economic, patrimonial and symbolic.⁴⁸

The right to democratic participation can be exercised when becoming aware of the available options and rights. The law recognises the importance of informing Victims of the legal process and therefore promotes an active participation.⁴⁹ It is the role of the officials, who assist Victims at all stages of the process, to inform of rights and available institutions, where and how to obtain assistance in the process, and how to preserve evidence.⁵⁰

3. Local

The Argentine Constitutions gives provinces and the City of Buenos Aires the competency to write their own legislation (when complying with the federal regulations). The provinces and the City of Buenos Aires have the autonomy to pass their own constitutions and procedural codes; however, they do not have the power to enact their own substantive codes which are unified for the entire country.⁵¹ Judicial procedures provide people with tools to solve conflicts through the intervention of the judicial branch.⁵² The city of Buenos Aires passed a Code of Criminal Procedure (CCP) in 2007. The CCP introduced elements of the adversarial system and three main articles on the rights of all victims.⁵³ The three articles

⁴⁷ Law 26.485, *supra* note 38, art 4 reads in an English translation: ‘Violence against women is understood as any conduct, act or omission, directly or indirectly, both public and private, based on an unequal power relationship, affecting life, liberty, dignity, physical integrity, psychological, sexual, economic or patrimonial integrity of women, as well as their personal safety. This definition includes those acts perpetrated by the state or its agents. Indirect violence is considered, for the purposes of this Law, as any conduct, act or omission, provision, criterion or discriminatory practice that places women in a disadvantage position compared to men.

⁴⁸ Ibid art 5.

⁴⁹ Ibid art 16(g).

⁵⁰ Ibid art 36.

⁵¹ See the text of art 126 of the Constitution of 1994, *available at*, http://pdpa.georgetown.edu/Constitutions/Argentina/argen94_e.html.

⁵² Cevalco L, *Derecho Procesal Penal de la Ciudad Autónoma de Buenos Aires*, 7 & 74.

⁵³ Código Procesal Penal de la Ciudad Autónoma de Buenos Aires (hereinafter, CCP), art 37 – 39, text *available at*, http://www.buenosaires.gob.ar/areas/leg_tecnica/sin/norma_pop.php?id=98678&qu=c&rl=0&rf=0&im=0&menu_id=21544.

indicate that during the process victims have the right to be informed of the options and results of the process,⁵⁴ to participate in the process by presenting further information during the investigation, and to request a review of the decision of the prosecutor to file the complaint.⁵⁵ At a personal level, the victim is given the right to be treated with dignity and respect by the judiciary⁵⁶ and to be physically and morally protected (extending this protection to family members and witnesses).⁵⁷

The CCP incorporates aspects of the adversarial system of justice, understanding the conflict as a real life problem that a person brings before the judiciary in request of a solution. This departs from the old paradigm which considered the judicial activity as a tool to discover the 'truth' and 'protect the law'.⁵⁸ The goal is, hence, to resolve a conflict and not

Title IV on the Rights of the Victim and Witnesses reads in an English translation:

Art. 37. Rights of Victims and Witnesses.

The following rights are guaranteed to victims of crimes and witnesses:

- a) to be treated with dignity and respect by the competent authorities;
- b) the reimbursement of expenses caused by the obligation to testify in the process;
- c) to require measurements through the competent bodies, to receive physical and moral protection and any other protection necessary for their own safety, and the safety of their family members and witnesses;
- d) to be informed of the results of the legal action they have participated on;
- e) to comply with the legal action in the place of residence, when possible and required in advance, in cases of people over seventy (70) years old, pregnant women, disabled or patients seriously ill impaired of moving.

Art. 38. Rights of Victims. Notwithstanding Arte 37, the victim shall be entitled:

- a) to be informed by the assigned prosecutor about the faculties he or she can exercise during the process and its consequences;
- b) to be informed on the status of the legal action and on the accused;
- c) to submit information during the investigation stage;
- d) to be accompanied by someone of trust, when the victim is a minor or incompetent at the time of the procedural acts, provided that this does not jeopardised the legal interest of knowing the truth of the alleged facts.
- e) to be informed of the results of the legal action, even when the victim had not intervened in it;
- f) to request a review of the decision of the prosecutor to file the legal action and to be notified of the decisions that may require the review, even when the victim has not intervened in the proceedings as a plaintiff and in those cases mentioned by this Code.

Victims will be informed of their rights at the time of submitting the complaint or at the time of the first intervention in the judicial process.

Art. 39. Information. The rights granted in this chapter shall be informed to the victim or witness by the personnel of the Public Prosecutor's Office at the time of the first subpoena.

⁵⁴ Ibid art 37(d), art 38.

⁵⁵ Ibid art 38(c)(f).

⁵⁶ Ibid art 37(a).

⁵⁷ Ibid art 37(c).

⁵⁸ Cevasco, *supra* note, 52, 3 to 6.

to discover a truth.⁵⁹ This to-be-solved problem occurs in a given society and at a specific time. In the search of the solution to the conflict, the system reduces bureaucratic barriers and introduces a more agile process, increasing the oral communication channels amongst the accused and the accuser, and between them and the judiciary. Furthermore, it recognises that there is no unique established way to achieve the resolution of a conflict and therefore offers alternative dispute resolutions to the parties.⁶⁰

The inclusion of the adversarial aspect in the CCP draws a clear line between the accusatory functions of the prosecutor—with the ability to collect evidence—and the impartial decision of the judge, which are based on the accusation done by the prosecutor.⁶¹ When the prosecutor receives the criminal complaint he or she can, depending on the characteristics of the case, order the filing of the complaint, request the lack of jurisdiction before the judge, or start with the preliminary investigation.⁶² The preliminary investigation stage gains relevance with the inclusion of the adversarial system. During this stage, the parties can present the evidence and receive options to solve the conflict using alternative dispute resolutions,⁶³ such as mediation.⁶⁴ The prosecutor determines the existence of the alleged facts and undertakes the preliminary investigation on the supposed illicit act that merited the investigation.⁶⁵ The parties have a right to control and participate during this stage of the process.⁶⁶ Once the prosecutor determines the existence of the alleged facts, the accused is informed of the criminal complaint.⁶⁷ The judge has no intervention during this part of the

⁵⁹ It is worth noticing, however, that some articles conserve the ultimate goal of “discovering the truth”, such as the letter of art 91(1) on the goals of the preliminary investigation. This shows how the inquisitorial spirit is still present in the text of the law.

⁶⁰ Ibid 7, 17.

⁶¹ Javier E Fuente, ‘Presentación’, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, Anotado y Concordado*. (1st ed, Grupo Editorial HS 2010) 11–15.

⁶² CCP, *supra* note, 53, art 85.

⁶³ CCP, *supra* note, 53, art 91 & 204. Francisco Castex, ‘Notas al Primer Código Acusatorio Porteño’, *Ley 2303. Código Procesal Penal de la Ciudad Autónoma de Buenos Aires* (First, AD-HOC 2009) 16.

⁶⁴ The form of mediation, as an alternative dispute resolution, is a practice not recommended in domestic violence cases, *see* Law 26.485 art 8, *supra* note 38. Supporters of this argument defend that it is impossible to mediate with parties who are in an unequal power relation.

⁶⁵ Castex, *supra* note 63, 10.

⁶⁶ CCP, *supra* note, 53, art 94.

⁶⁷ Castex, *supra* note 63, 13.

process, unless a coercive measure is required.⁶⁸ Once the preliminary investigation finishes, the prosecutor may request to file the criminal complaint,⁶⁹ or refer the case to a trial stage.⁷⁰

B. Institutional Level

1. Creation of Legal Offices

Access to justice for victims improved significantly during the last decade in Argentina, though the creation of public funded institutions, such as legal aid offices.⁷¹ For example, in the city of Buenos Aires, women victims of violence can now claim their rights at the Domestic Violence Office (*Oficina de Violencia Doméstica*, OVD),⁷² the Public Prosecutor's Office for the City of Buenos Aires (already defined as Office),⁷³ the Access to Justice Office (*Centros de Acceso a Justicia*),⁷⁴ police stations,⁷⁵ and courts.⁷⁶ The creation of these offices, together with the recent legislative developments, offers Victims new options to demand for their rights, beyond the traditional forums (i.e., family courts). The implementation of the new institutional structure resulted in an increase of submission of complaints.⁷⁷

The following analysis focuses on the example of the Office. The Office is used as an illustration of a public institution working on the right to access to justice, the right to a remedy, and the right to democratic participation. The Office serves one of the most populated urban centres in the world with 2.891.082 inhabitants. It has functional autonomy

⁶⁸ CCP, *supra* note, 53, art. 174 with possible coercive measures.

⁶⁹ Ibid art 199 - 203.

⁷⁰ Ibid art 209 - 212.

⁷¹ For a study on how legal aid offices can improve accessibility to rights see UN Secretary-General, *Legal Empowerment of the Poor and Eradication of Poverty*, Report A/64/133, 07.13.2009.

⁷² For a description on the operation of the office see <http://www.csjn.gov.ar/ovd/>.

⁷³ For a description on the operation of the office see <http://www.fiscalias.gob.ar/>.

⁷⁴ For a description on the operation of the office see <http://www.jus.gob.ar/accesoalajusticia/caj/centros.aspx>.

⁷⁵ Law 26485, art. 36.

⁷⁶ Ibid art. 22.

⁷⁷ Julieta Marotta & Agustin Parise, *On Codes, Marriage, and Access to Justice: Recent Developments in the Law of Argentina*, Journal of Civil Law Studies [Forthcoming, 2014]. For a perception on the number of cases filed see the statistics collected by the Domestic Violence Office and the Public Prosecutor's Office for the City of Buenos Aires, available at, http://www.csjn.gov.ar/docus/documentos/cons_temaovd.jsp?temaID=K186; and <http://www.fiscalias.gob.ar/al-habitante/acerca-de-mpf/ofavt-oficina-de-asistencia-a-la-victima-y-testigo>.

and autarky within the judicial branch.⁷⁸ The functional autonomy enables it to create norms to regulate its own organisation and operation. The functional autarky allows the Office to adopt minor legislative enactments such as orders and acts of administrative or financial characteristics.⁷⁹ The Office shall promote justice in defence of the legality of the general interest of society.⁸⁰ Its ultimate goal is being a “helper” in the justice service and satisfying the social interest⁸¹ over the personal one. Accordingly, two main strategies towards access to justice and conflict resolution were implemented: decentralisation, with five units located in different geographical areas of the city; and multidisciplinary assistance, with the creation of the OFAVyT as part of the Office.⁸² OFAVyT provides support to Victims during the judicial process and sees the conflict in a holistic way. The group is composed, mainly, of attorneys, physiologists and social workers. OFAVyT is inspired on the idea that in order to achieve a successful resolution of the conflict Victims need to feel part of the process and to become active participants. OFAVyT takes immediate intervention once a domestic violence case is forwarded to the Office.

a. Motivations for the Creation of the Public Prosecutor’s Office

Fresh air came from the river to Buenos Aires. Chief Operators highlighted during the interviews that the Office received four mayor waves of freshness: (i) a new constitution; (ii) the new CCP; (iii) a reduced number of crimes and misdemeanours, falling under the jurisdiction; and (iv) the appointment of an Attorney General, who brought concrete ideas on how to introduce a judicial process that considers the socio-demographic characteristics of those who live in the city. Furthermore, the transfer of crimes and misdemeanours from the federal justice to the city justice done in instalments⁸³ was mentioned as an advantage which allowed the city to slowly adapt its institutions to the new crimes absorbed.

⁷⁸ CCP, *supra* note 53, art 124.

⁷⁹ Humberto Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires Comentada* (Rubinzal - Culzoni Editores 1996) 354–355.

⁸⁰ CCP, *supra* note 53, art 125.

⁸¹ Ibid art 125(2); Quiroga Lavié, *supra* note 79, 335–356.

⁸² See webpage of OFAVyT, available at, <http://www.fiscalias.gob.ar/al-habitante/acerca-de-mpf/ofavyt-oficina-de-asistencia-a-la-victima-y-testigo/>.

⁸³ Convenio de Transferencia Progresiva de Competencias Penales de La Justicia Nacional Al Poder Judicial de La Ciudad Autónoma de Buenos Aires 2003; Convenio de Transferencia Progresiva de Competencias Penales de La Justicia Nacional Al Poder Judicial de La Ciudad Autónoma de Buenos Aires 2008.

The interviews undertaken expressed that the motivation for the creation of the Office came from the observation and understanding of the needs of the people who live in the city, and by learning from negative experiences of other institutions.

People did not know what they wanted, where to go, what to ask for. They did not receive orientation or help.

Chief Operator (Interview 29.07.13)

The expectations and demands from the people towards the judicial system varied, and were mentioned by Chief Operators to be a central point when setting up the Office. Therefore, efforts were made by Chief Operators to understand the needs of the population to provide better answers to them. The Office based its analysis to understand those social problems on in-house conflict maps,⁸⁴ which graphed in which areas of the city conflicts were occurring. The Office then undertook statistical analysis on what people complained about, and their reasons to complain. These data enabled Chief Operators to strategically locate units in places where they found more vulnerability to access to justice. Furthermore, the statistics were mentioned as helpful to introduce strategies to reduce bureaucratic steps by increasing the oral communication (and reducing the written communication), and allocating more efforts to inform people when they have a case to claim at the Office. For this purpose, the Office provided the population with different access points to initiate criminal complaints. This first filter was decided to be installed at these access points, preventing people from visiting inappropriate judicial agencies, and hence reducing the amount of time spent in finding the accurate path to justice. The access points introduced by Chief Operators in this new strategy were: (i) a toll-free number, a webpage and an email address coordinated by the Division of Reception of Complaints (*Oficina Central Receptora de Denuncias*, OCRD); and (ii) a Unit of Orientation and Information (*Unidad de Orientación y Denuncia*, UOD), coordinated by the Division of Access to Justice. OCRD and UOD are both coordinated by the General Secretariat.

The needs of people were mentioned by Chief Operations to motivate other specific changes. The decentralisation of the units was motivated by the observation of Chief Operators of the hectic lives people have in the city, which makes time and money scarce

⁸⁴ For example, *see*: Public Prosecutor's Office for the City of Buenos Aires, 'Cuarto Informe de Conflictividad' available at <http://www.fiscalias.gob.ar/informe-conflictividad-mpf-ciudad/>.

resources for many, becoming an impediment to claim rights. Consequently, the proximity to the Office was mentioned as an important element. Furthermore, the Office needed to adapt to the availability of people to approach the judiciary, many times this being after working hours. Accordingly, the Office changed its opening hours, from the ordinary judicial hours from 7:30 to 13:30 to new hours from 8:00 to 20:00. It also eliminated the judicial holidays, which are set-vacations taken by courts during the winter and summer. These changes allow a better flow of communication between people and the Office, with assistance provided to them during the entire year. The toll-free number was improved in its capacity to assist people and technology to receive complaints, because it is the only unit within the Office that operates 24/7. Moreover, having in mind the needs of Victims, OFAVyT was created to accompany them along the process, together with the addition of a judicial police.

Constructive communication amongst countries of the region (e.g., Chile, Colombia and Costa Rica), and learning from successful and failed experiences, was mentioned as an important element for the institutional set-up of the Office. For example, the structure of adopting a Unit of Early Intervention (*Unidad de Intervención Temprana*) was inspired by the Colombian Units of Immediate Answers (*Unidades de Reacción Inmediata*).⁸⁵ Increasing the assistance to Victims was triggered by the reflection on the lack of assistance for Victims in the region. The strategy to assist Victims started by the Office became a source of inspiration for other jurisdictions, showing a constructive communication between Public Prosecutor's Offices of the region.

b. Strategies to Improve Access to Justice

The city of Buenos Aires is currently divided into municipalities (*comunas*) with political and administrative management.⁸⁶ The Office located one unit in each municipality and incorporated in each municipality a 'reception unit' to orient people in any matter and receive criminal complaints. There is also another unit, OFAVyT, which assists victims and witnesses. The location of these reception units aimed, when possible, to places with easy

⁸⁵ For more information on Colombia Public Prosecutor's Office see Fiscalía General de la Nación. Colombia, 'Centros de Atención Ciudadana,' available at, www.fiscalia.gov.co/colombia/servicios-de-informacion-al-ciudadano/centros-de-atencion-ciudadana.

⁸⁶ Constitución de la Ciudad Autónoma de Buenos Aires, art 127, available at, www.cedom.gov.ar/es/legislacion/institucional/constbsas.

access by public transportation. The reception units are decentralised following the idea that if the law goes to the people, there are better chances that people will use and enforce their rights.

Chief Operators mentioned the need to create the General Secretariat to administer the abovementioned access points. Almost 30% of the Office budget was told to be allocated to that General Secretariat, and a large percentage of the personnel work there. The General Secretariat was given the task to coordinate four divisions that tackle different aspects of access to justice, related to channels of access to justice and suitable ways to transit through justice. The General Secretariat has the duty to undertake preventive campaigns with a focus on children, because of the precautionary impact and their capacity to receive information using technology and the possibility to transfer that information to adults. In addition, campaigns are run in the massively attended annual book fair that takes place in the city. There is also a program in where prosecutors go to the schools to inform students about the Office and what rights they can claim. This was considered by Chief Operations to have a preventive impact, and a transferable effect, because they observed that when the children gain awareness of their rights, institutions and new technologies, where to find information and submit a complaint, it increases the possibility of that information to be transferred to the adults in the family. Lastly, the Office implemented recent campaigns at the metro to make people become aware of the existence of the Office and the rights that can be claimed at the Office.⁸⁷ All these strategies were mentioned as being also necessary to create a social consciousness of assimilating the Office to a communal place to receive assistance and claim for rights. This latter campaign is in lines with efforts undertaken by similar units in other jurisdictions, both in Europe and the Americas.

The two access points represent main strategies to improve access to justice. The toll-free number of OCRD, as already mentioned, provides one of the access points. It was the first strategy implemented to improve the channels of access to justice. This option gives people the possibility to submit a complaint (or receive appropriate referrals) via phone. The service recently included the option of e-mail and webpage complaints. The UOD provides the other access point. It is a walk-in unit that listens to the issues brought by the people. It

⁸⁷ See for example the campaigns in metro stations as announced at the Public Prosecutor's Office for the City of Buenos Aires webpage *available at* <http://accesoajusticia.fiscalias.gob.ar/articulos/actualidad/campana-en-la-red-de-subtes/>

provides orientation, when not facing a judicial problem of its competence, and drafts criminal complaints that will be then forwarded to the prosecutor. UOD also has mobile units, which enter the ‘emergency neighbourhoods’ (*villas*) that are socially and economically isolated and have high crime rates.⁸⁸ Chief Operators mentioned that before starting the UOD and mobile units, a pilot project was undertaken only in some municipalities. This pilot project evolved into a permanent one that was spread to the entire city. The success of the pilot project was assessed by its legitimacy (the believe that these additional channels to access are needed to increase the opportunities of people to claim for their rights) and not by doing an input-output measurement (i.e., counting the amount of people that approached the units to seek for assistance or to file a complaint, against the cost of having the service operating).

Technology was mentioned as a tool of great help to improve access to justice in domestic violence cases. Chief Operators expressed that Victims can be under stress when searching in the Internet for help and hence, they needed to develop a tool that was fast and easy enough to accommodate to the time and fear of Victims. The adopted technique enables the Office webpage to pop-up immediately as the first option when typing in Google (inside the city) phrases such as ‘my husband hits me’ or ‘my partner mistreats me.’ These strategies are especially important for Victims because they cannot always find the moment, or strength, to seek for help.

The Office put into action channels of access and visibility to build trust in the city. This was considered to be important by Chief Operations since the Office is a new option, and efforts are required to make people become aware of its services and its role in society.

Who has the first relationship with the community? Which is the first point of contact with the community? The first point of contact is the Public Prosecutor’s Office, because it is the place where you file the complaint.

Chief Operator (Interview 09.01.13)

There are also external access points where criminal complaints can be made. On the one hand, the police stations socially known as the first place to go to submit complaints; and, on the other hand, the previously mentioned OVD, which refers cases to the Office. The criminal complaints undertaken at both external access points are then referred to the

⁸⁸ For recent strategies on access to justice in emergency neighbourhoods, see La Nación, ‘Un Atajo Hacia La Justicia: Cómo Funcionan Las Oficinas Del Ministerio Público Fiscal En Las Villas’ (29 August 2014), available at, www.lanacion.com.ar/1721906-un-atajo-hacia-la-justicia-como-funcionan-las-oficinas-del-ministerio-publico-fiscal-en-las-villas.

Office. Chief Operators mentioned that they communicated with both institutions to improve the mechanisms of referral with external access points, expediting them and consuming fewer resources. It was mentioned during the interviews, however, that there was still room for improvement.

c. Strategies to Reach a Remedy

Chief Operators mentioned during the interviews that the new system needed to have a deeper consideration of victims. The new CCP, with the inclusion of aspects of the adversarial system together with three key articles on the rights of victims in the process, were important elements mentioned during the interviews as being considered when starting strategies to reach a remedy. Furthermore, the lack of attention to victims in the previous set-up of the judicial system and in other jurisdictions, also served as evidence that victims were not sufficiently considered. This lack of consideration was mentioned as diminishing the importance of victims to carry out the investigation and as an affected party of an illicit act that ultimately affected the wellbeing of society. OFAVyT was then designed to assist victims through the legal process by assuring that victims understood the process and their role in the process and that parties reached a remedy in the form of resolving their conflicts (i.e., conflict resolution). It was seen as an innovative and necessary way of assisting victims and takes intervention when parties request it, when the prosecutor request it, or when receiving mandates by legislative orders.

The large volume of domestic violence cases and the complexity of these cases triggered the mandatory intervention of OFAVyT for Victims. Furthermore, the characteristics of domestic violence that influence the way it should be treated within the judicial system, motivated Order 16/2010. This Order was mentioned by Chief Operators and those who assist Victims in a daily basis (i.e., judges, prosecutors, mediators and OFAVyT personnel, Justice Providers) as being one of the more consulted regulations helpful to delimitate how to handle these cases. Domestic violence is not a crime *per se*, but Order 16/2010 defines domestic violence as “any violence committed by a person with whom the victim has an intimate relation or by other family members, regardless the place or form in which violence is exteriorised.”⁸⁹ That Order then enumerates the illicit acts that fall

⁸⁹ Order 16/2010.

into this definition and that fall under the jurisdiction of the Office: threats,⁹⁰ violation of domicile,⁹¹ simple and aggravated damages,⁹² breach of family assistance duties⁹³ and harassment.⁹⁴ With the inclusion of OFAVyT, more attention was given to the type of assistance and answers given by the Office to Victims.

The multidisciplinary assistance to Victims follows the idea that in order to achieve conflict resolution the conflict needs to be approached in a comprehensive way, not limiting it to the legal aspects. The Chief Operators noted that the inclusion of psychological, economic and socio-demographic elements were important components of the conflict which needed to be considered because they were features of that conflict. Interviewees expressed that domestic violence conflicts were very difficult to tackle in a judicial context, because they also have physical, psychological and social origins and consequences. They also have the particularity of, in many cases, a strong emotional connection between the accuser and the accused, and a feeling of guiltiness that some Victims bring to the Office. Justice Providers mentioned that they frequently observe an exchange in roles where the Victim considers herself as guilty, while the abuser victimises himself.

The characteristics of conflicts in domestic violence cases demand particular ways of investigating the illicit acts and of assisting and taking measures to protect Victims. The conflict is then approached in a multidisciplinary way and the solution to the conflict is not limited to a court decision. Chief Operators considered it important to include the possibility of giving alternatives to the parties, such as a criminal mediation, in where their participation and communication is more direct and gives the chances to the parties to solve their conflict. This technique started to be used at the Office in 2007. The prosecutor allows this alternative if it is considered a better mechanism to reach the peace and well-being of those who are part in the conflict and the society as a whole.⁹⁵ There is an on-going debate about using mediations for domestic violence cases. As mentioned before, Law 26485 and the CCP exclude its use for these cases. Despite not being fomented, the prosecutor will suggest the mediation only if the safety of Victims is not highly risked and the mediation will take place

⁹⁰ Código Penal Argentino (1984), art 149bis, paragraph 1.

⁹¹ Ibid art 150.

⁹² Ibid art 183, art 184.

⁹³ Penalty for Breach of Duty of Family Assistance 1950.

⁹⁴ Código Contravencional de la Ciudad Autónoma de Buenos Aires 2004, art 52.

⁹⁵ *Interview done to Dr. Luis Cevalco (2014) available at*
http://www.youtube.com/watch?v=8bqnDw74fwg&feature=youtube_gdata_player.

if the parties, and specially the Victim, agree to mediate. This statement by Victims to agree to mediate is validated by the personnel of OFAVyT, who draft a multidisciplinary report stating if the Victim is in the condition to face the abuser in mediation.

Chief Operators expressed that since the Office started to operate, a large number of domestic violence complaints started to be filed (when comparing with the other cases that fall under their jurisdiction). OFAVyT, hence, was requested to intervene more in domestic violence issues, becoming more specialised in the subject. Furthermore, in 2012, and motivated by the number of cases received and the Brasilia Regulations regarding Access to Justice for Vulnerable People (2008),⁹⁶ a specialised prosecutor unit was created to investigate only domestic violence cases of high risk. This tailor-made public policy was mentioned by Chief Operators and prosecutors to aim to find an accurate way to solve a conflict of a ‘double-victim:’ victim because she suffered a crime, and victim of an alleged aggressor with control and/or influence over her. The specialised prosecutors have currently more time to deepen the investigation and use all available tools to solve the conflict (seen in a comprehensive way).

The state intervention in the conflict, as an outside actor of the internal dispute between the parties, has shown to be relevant during the interviews.

The issue is that when they come here, they are already in a terrible conflict, they already insulted one another. Without institutional intervention, that at least can delimitate the field and generate respect in the communication, it is very difficult to solve the conflict. Mainly for that reason they tend to say that “we are in another institutional setting, I have to be respectful.”

Chief Operator (Interview 10.12.12)

However, the intervention of the state needs to be helpful to solve the conflict and not to become another burden to be carried by the parties. Accordingly, all attempts mentioned are aimed at adjusting accessibility and improving the transition of Victims through the judicial system.

d. Strategies to Improve Democratic Participation

Knowing rights gives tools to people to voice themselves in society. Hence, it becomes a necessary step to improve democratic participation of Victims. Strategies to reduce the gap between rights and the ability of the people to realise the existence of their rights and make use of them were mentioned in the interviews with Chief Operators. Some

⁹⁶ Brasilia Regulations regarding Access to Justice for Vulnerable People, *supra* note 12.

strategies mentioned are aimed at every member of society, to make them aware of their rights and of the existence of the Office as a place available to claim rights. For this purpose, the Office implemented the already mentioned outreach campaigns (i.e., metro stations).

Other strategies mentioned aimed at facilitating the communication between Victims and the Office (mainly the prosecutor and OFAVyT) when dealing with Victims that had already accessed the Office. For example, during the first assistance meeting, Victims are informed of their options in the process, and the prosecutors explain their rights. The results of the on-line interview conducted at OFAVyT for this paper indicated that most Victims did not know their rights when they had the first assistance meeting. Higher level of education, accessibility to social and economic resources and the chances to access information were mentioned as characteristics present in those Victims who know their rights by the time of the first assistance meeting. In addition, giving legal information and providing psychological assistance was recognised as the main elements that helped Victims to increase their awareness of rights. Victims who were aware of their rights by the first meeting were perceived by interviewees as more capable of increasing their legal capacity to solve the problem. Interviewees observed that some Victims became passive subjects in their conflicts after filing a complaint and that for this group the access to the Office ended up being mainly a means of expression.

2. Lessons from Daily Activities

a. Assistance Provided

The transit through the judicial system seems to be a lonely process. Service Providers indicate that accompanying the Victim along the process and providing advice (physiological and legal) are the two main advantages of OFAVyT. However, when grouping the advantages mentioned by the Service Providers, it can be seen that accompanying, supporting and listening to worriers during the process are considered more relevant than the actions that relate to assisting (psychological and legal assistance), providing information and making referrals.

Victims feel much better when they are heard and advised. [...] [The assistance] educates many of the Victims on the situation in which they are immersed and starts creating in them the desire to move away of that conflict.

Service Provider, psychologist (On-line Interview June-August, 2013)

The cycles of domestic violence are already known in the literature. It is then important to recognise that this initial intervention of OFAVyT is a starting point, which brings awareness to important elements such as the options available to seek for help and the non-acceptance by the state of the behaviour of the abuser (even when they were accepted in the Victim's house when being a child, or in the social context of Victims). The initial intervention also creates reflection on Victims and in some cases the aggressor finds the intervention of the state frightening and they may even cease the hostile behaviour.

Or at least, getting a small change in the Victim, by helping her to rethink certain issues.

Service Provider, psychologist (On-line Interview June-August, 2013)

Communication turns to be a key element. Being listened to and having the chance to access a space to freely reflect and express oneself, may allow the Victim to situate herself in a different place and trigger alternative thoughts to solve the conflict. However, the communication needs to aim at realistic options, in order to avoid false expectations by the Victim by promising results that the judicial system might not be able to provide. Under this limitation, the support and assistance becomes even more relevant, because this might be the only answer that Victims may receive during the case.

The different professional formation of the Service Providers explains that they may see the conflict from different perspectives, which as a whole, is in line with the comprehensive approach to the conflict suggested by the legal framework. Psychologists tend to emphasise the power of listening, reflect and understanding of the situation by the Victim, as a first step towards a change. Lawyers, even when recognising the assistance aspect, see their intervention more as part of a judicial process and highlight the relation of OFAVyT with the prosecutor, and how their reports can assist the prosecutor in defending the interests of the Victim as a way of supporting the evidence.

Service Providers consider that OFAVyT contributes to the effective resolution to the conflict. The main factors mentioned are the assistance to the Victim from a less structured format, with the chance of hearing, accompanying, or providing referrals. OFAVyT can be therefore considered a channel of communication between the Victims and the judiciary in the forms of meetings that have a less structured format, and with a specific focus on the Victims and their place in the process. OFAVyT can offer more contribution for Victims that lack a supportive family and/or social network.

b. Challenges Faced by Victims

Domestic violence is a complex problem, which demands a multi-layered approach by the Service Providers when assisting Victims and multi-answered tools from the judicial system. Service Providers have to contemplate legal, welfare, psychological, economic and social aspects of this comprehensive conflict.

To represent the psycho-social interest of the Victim before the authorities in charge of the criminal proceedings, where the Victim feels as an outsider.

Service Provider, psychologist (On-line Interview June-August, 2013)

Domestic violence, when compared with other legal issues, might be one of the illicit acts with more consequences on the entire being of persons. Victims face challenges that derive from the transit through the legal system and the understanding of the different options that become available when a complaint is submitted. Many times, Victims have two cases opened in parallel: a civil case and a criminal case. Accordingly, cases will follow different procedural paths. Service Providers make efforts to explain the different proceedings and consequences, yet they expressed that it is difficult for Victims to understand the distinctions and to follow the events of their cases and the actions they have to take. Each proceeding requires interventions from the Victims and to comply with demands, they also require time and energy from their behalves.

Because many times the solution that we can provide is not enough for the problems posed by the Victims during the interview.

Service Provider, lawyer (On-line Interview June-August, 2013)

Victims face a problem that most probably already impacted various aspects of their lives. It is unrealistic for Victims to get one real ‘treatment’ to solve the problem as a whole, because there is no such treatment. Victims are therefore required to take an active role and consider a list of resources, depending on how much they depend on the accused (economically and emotionally), that can open all the doors where assistance is available and cope with the different aspects of the conflict. Furthermore, the process might take years and the judiciary cannot always respond to this. For this reason, institutions like the Comprehensive Centre for Women⁹⁷ (*Centro Integral de la Mujer*), composed also by an

⁹⁷ ‘Comprehensive Centre for Women’

interdisciplinary group and located in different areas of the city, deals with the issue as a whole providing physiological assistance in the long term and legal information and representation. OFAVyT refers Victims to the Comprehensive Centre for Women, where they can seek support outside of the legal process and to ask for means to solve different aspects of their problems.

The most recurring phrase in every interview is "I just want to live in peace, and that he does not bother me anymore."

Service Provider, psychologist (On-line Interview June-August, 2013)

Other challenge faced by Victims is when the judiciary does not respond to their expectations. As expressed in the interviews, it is common to hear from Victims that they want the other party to stop bothering them. The judicial system not always manages to give this response with the tools available to intervene, because there are many ways for the abuser to 'bother' the Victim. This makes it very difficult for the judiciary to tackle them all. In addition, civil and criminal cases fall under different jurisdictions that deal with different complaints. Furthermore, it can also occur that the needs of the accuser do not find an answer in the judiciary. An exemplifying case is provided by a woman who had her ex-boyfriend harassing her. He appeared at random places where she was and stared at her. This happened consistently for almost a year and even continued after a criminal complaint was submitted and a restraining order granted. Now, the Victim wants the abuser to be away from her life, but the judiciary cannot incarcerate the accused, because this is not a sanction available for the misdemeanour of harassment. At the most, the abuser may receive probation and be instructed to assist a course aimed at violent men to stop such conducts.⁹⁸

Very often, domestic violence occurs behind closed doors and the witnesses of the event are the accused and the accuser, and sometimes their children. This scenario does not allow for strong evidence in the eyes of judges. Therefore, many times is the word of one against the word of the other. A recent ruling from the City Tribunal understood the evidence in a holistic way, and accepted evidence submitted by the prosecutor that helped prove the violent environment where Victims were immersed, even when it was not related

<http://www.buenosaires.gob.ar/areas/des_social/mujer/consulta.php?menu_id=31712> accessed 28 June 2014.

⁹⁸ An example of these programs available in the city is 'Support Group for Violent Men' <http://www.buenosaires.gob.ar/areas/des_social/mujer/proghomvio_hd.php?menu_id=31724> accessed 28 June 2014.

to the event alleged in the complaint.⁹⁹ The exercise of violence in most of the abusive relationships is repeated and manifested in many forms, consequently the judge allowed evidence that could prove the violent environment in which the accuser was involved. This ruling is gaining strength but it is still not largely accepted because of the interpretation of the presumption of innocence until proved guilty.

Victims may achieve the ideal scenario where the accused no longer bothers her, and she is able to resume her life, and she therefore needs to sustain this in time by not getting involved in another abusive relation. This is another reason why Service Providers stressed in interviews the need to continue with psychological support to understand where Victims stand in the conflict and the responsibility they have to get away from the conflict and to not repeat it.

c. Role of the Office for Conflict Resolution

Service Providers were asked in the on-line interviews how they perceived the intervention of the Office for the effective resolution of Victims' conflicts. Almost all interviewees recognised some elements that contribute to arrive at a conflict resolution. However, only two interviewees perceived a high contribution, while the rest stated that it contributes or that it does not contribute much.

An active Office was recognised also as a social regulator with its capacity to apply sanctions, such as probation, and/or incorporate alternative dispute resolutions, such as mediations. Chief Operators and Service Providers stressed that in some cases it frames the conduct of the aggressor as one that is not accepted and which has legal consequences. It acts as a limit. Keeping statistics on domestic violence cases enables to create evidence and visibility of this social problem for the community. An active Office also provides tools, legal and psychological, for Victims to start solving problems. However, the will of Victims is determinant, and hence, additional long term psychological support was mentioned as being helpful for Victims to recuperate desires and trust in their capacities.

If the Victim decides to "forgive" the aggressor [...] the contact with the Victim becomes difficult, and in many cases they even desist of the legal claim.

Service Provider, law student (On-line Interview June-August, 2013)

⁹⁹ *Newbery Greve, Guillermo Eduardo s/ inf art 149 bis CP* [2013] Tribunal Superior de Justicia de la CABA 8796/12.

The immediate intervention of the Office in the conflict, as seen by Service Providers, is considered as the instance that contributes the most to start solving the conflict. Victims may obtain temporary alimony or child support, protective orders, security measures and start developing consciousness of their problem, and the different public funded institutions available to offer them help. Hence, the Office informs Victims of the different choices they have available to solve the conflict. Many times the options are outside of the Office, and as it was mentioned before, the state opened an array of institutions to cope partially with this problem. For example, if the case has civil consequences, Victims are referred to the OVD to receive assistance with the civil complaint, while if they need legal representation in a civil case, such as community property issues, Victims are referred to a pro bono attorney or to the Comprehensive Centre for Women. If Victims are still at risk, but not facing a high risk, they are provided with emergency numbers to call for help, if needed. Knowing the options available empowers women to make the decision of leaving the aggressive environment, because they start to realise the existence of available resources and options.

The judiciary may also provide short-term remedies. It may give orders and recognise rights, but it is not the space to solve the entire problem. It may help to frame the act, to make Victims be aware of the institutional apparatus available to help, and in some cases, the abuser may be interrogated about the situation, and the Office may have the capacity to implement measures delimitating the actions performed by the abuser. The limitations of the judiciary are given by the complexity of the problem which requires a comprehensive approach to it and an assistance prolonged in time. These two cannot be fully provided by the Office. In addition, the resources of Victims were also considered by the interviewees as contributing to the effective conflict resolution. The supportive network of Victims (e.g., family, friends and acquaintances) was mentioned as one of the needed resources together with the chance to start a psychological therapy. The economic resources were not highlighted as a needed resource, although it was mentioned as one of the contributions of the judiciary when stating the capacity to grant temporary child support.

The non-effectiveness of the penalties for abusers was mentioned as an obstacle to conflict resolution. Some interviewees stated that the way laws are framed does not give enough options to solve the complexities of the issue. In addition, some stated that the discriminatory stereotype towards Victims was not completely absent. Lastly, some interviewees understood that the process resulted in appropriating the conflict, and thus not

fomenting the autonomy and the decision to the parties involved in the conflict. In this argumentation, mediation, if done responsibly, was mentioned as a way in which each party could get hold of their portion of the problem.

C. Individual Level

This section presents first conclusions of in-depth interviews with Victims who, at the time of starting the study, were already using the services offered by the Office. Victims had accessed the Office with a criminal complaint on threats¹⁰⁰ and harassment,¹⁰¹ two illicit acts that also occur between family members or partners that fall under the category of domestic violence cases, and that demand mandatory intervention of OFAVyT.¹⁰² Many of the complaints that demanded intervention of the Office also had a civil case opened in parallel dealing with the civil aspect (e.g., protective order, child support, divorce). Most of the Victims that were interviewed, when asked about their problem in a short questionnaire provided before the in-depth interview, answered that their problems were: “threats,” “my husband hits me,” “harassment,” and “family violence.” Some Victims referred to external elements as being the problem, such as “the consumption of alcohol.” The remainder of this section analyses how Victims were legally empowered. Following this paper’s definition of legal empowerment, this section first analyses the channels of access mentioned by the interviewees and subsequently, the consequences of that access, with a specific look at how Victims were aware of their rights. The section then analyses how Victims solved their issues, and which of the elements provided by the judicial system helped them to solve their problems.

1. Channels of Access

Police stations were the first chosen point of access for Victims that were interviewed. Furthermore, police stations were also mentioned as being the first referral point from where Victims knew the places to approach to seek further help. Other referral points often mentioned during the interviews were hospitals, family and friends; while acquaintances, courts, advertisements in the media, and others, were the least chosen referral

¹⁰⁰ Art. 149 bis, paragraph 1, Criminal Code.

¹⁰¹ Art. 52 Contravention Code

¹⁰² Order 16/2010.

points. Those Victims that received the information on where to go from hospitals, family and friends were suggested to go to police stations. The second referral point from where Victims knew the places to approach to seek for further help was occupied by a toll-free number to help Victims (137-line)¹⁰³ and OVD. The latter two referral points were indicated to Victims by police, hospitals, family and friends.

Police stations traditionally were one of the only places available to submit complaints. The current design of the judicial system enables Victims to submit a complaint in many other places, such as OVD and the Office. However, interviews indicated that police stations showed to be in the social consciousness as the places to go and Victims showed to have difficulties memorising the names or contact information of the other places available to submit complaints or to seek for assistance. Even in cases where Victims were not happy with assistance received at police stations, and knew of other available options, when asked where they will seek for help if another event occurred, the answer was again “the police.” The reasons mentioned by Victims on why they selected the police as the access points were related to the following factors: (i) the police is seen as the immediate helper, so under a stressful situation Victims recur to the first place that comes into their minds; (ii) the location of police stations in the neighbourhood and the fact that Victims know where they are located. Many times this happened because Victims had to do other administrative paperwork there; and (iii) the fact that the police is a neutral institution without adding an emotional element and also allows Victims to avoid sharing their experience with their loved ones or acquaintances.

[...] because with these things is like saying “this will never happen [to me]” until they happen. And when it happens, you say “were should I go?” Because it is not easy to share it [with others]. But, you have to do something, as a parent you have to react. Then, when you are more calmed, you are in the position to share it with someone, with the one you know better [and] they tell you “yes, because the same happened to a friend of mine, and she did...”

Victim, Female, 36 years old¹⁰⁴ (Interview, 08.08.13)

Most Victims expressed a feeling of confidence at the time they filed the complaint against the abuser. Victims expressed achieving a saturation point before filing the first complaint. Children appeared to be another element that triggered the complaints because of

¹⁰³ For a description on the operation of the 137 phone line, see <http://www.jus.gob.ar/atencion-al-ciudadano/atencion-a-las-victimas/violencia-familiar.aspx>

¹⁰⁴ The Victim had no contact with the accused after filing the complaint, she was pregnant at the time she submitted the complaint, and the accused had not recognised the child.

the safety of a child or the lessons children were learning, together with the monitoring of the school where the children manifested the consequences of the abuse. The first perception of Victims gained on their own capacity to make decisions for themselves showed to be an important element of the act of filing a complaint. Furthermore, the complaint had as a first consequence the chance for Victims to witness how the reality that they were living was perceived by others. Filing the complaint works as an eye-opener.

Interviewer: How did you feel after filing the complaint?

Interviewee: No. I liked it a lot, because it surprised me.

Interviewer: It surprised you?

Interviewee: Yes. It surprised me that it came out that way. And it made me feel more confident [about myself], and about what was that I wanted.

Interviewer: In which sense you felt “more confident”?

Interviewee: In my decisions. Up to here I tolerated, up to here I do not. This I can stand, this I cannot.

Interviewer: It is as if it gave you more confidence to make decisions or more confidence in saying ‘this I want, this I do not want’?

Interviewee: Both, because filing a complaint implies also making a decision.

Victim, Female, 18 years old¹⁰⁵ (Interview, 03.02.14)

Law was perceived by Victims as a “protection.” The Office was seen as an aim-oriented institution, complying with the needs of the judicial system, and hence, asking questions in a predetermined format. The referral made by the Office to psychologists was mentioned, by those Victims that activated that referral, as an important emotional support. This support helped Victims understand what to expect and to desire from a relation (and from life in a broad sense) and the role they play in the life they want to pursue. Furthermore, those Victims that stated that they perceived that Justice Providers were willing to help them, also mentioned a feeling of trust on the recommendations made by those Justice Providers and a desire (and in some cases manifested as a future plan) to comply with those suggestions. The inclusion of offices that offer assistance, such as OFAVyT, seems to expand the formalities of a judicial system by exploring other aspect needed to overcome the conflict (e.g., physiological).

If I would have not gone to Lavalle [referring to OVD], I would have not gone to the psychologist. I would have had nothing, and I would have not come here [referring to the Office].

Victim, Female, 42 years old¹⁰⁶ (Interview, 24.07.13)

¹⁰⁵ The Victim lived with the accused by the time of the second interview. She had, however, been separated the first two months after filing the first complaint.

Many Victims, as seen in the above mentioned excerpt, perceive the transit through the judicial system in steps. The first step being the police, the second step being OVD or the family court, and the final step being the Office. In view of this, the criminal complaint—which involves the Office—showed to be, for some cases, the final step and the last source of assistance in their case. This can be explained because the criminal complaint pursued a social interest while the civil complaint pursued a private interest. In this view, the criminal case may continue even with the inaction of the Victims, and without legal representation. The Office contacts the Victims as soon as the criminal complaint arrives, and the investigation starts regardless the Victims' participation. Some interviewees, who did not continue with their civil complaint, mentioned that they continued with the criminal complaint because they received a call from the prosecutor unit to approach them, showing that if they would have not received that call, most probably, they would have not continued with the case. If Victims do not want to continue with the criminal case, the prosecutor loses its principle provider of evidence, however, they can continue if they consider they have enough evidence to support the case. This scenario was mentioned by prosecutors as being very difficult to sustain, however.

Access to legal offices does not seem, as reflected in the interviews, to have an impact on the Victims knowledge of rights. Victims continue thinking in terms of problems, in terms of help, in terms of a desire of feeling better or of overcoming the situation. When Victims were asked on the lessons learned after having accessed to the legal offices, the answers were related to knowing that there was someone to help them, that they could count on the legal offices, and that they themselves are the ones who need to do something if they want the situation to change. Victims were then asked directly if they knew about their rights. Answers were almost in every interview negative, and Victims even stressed that they had never thought in those terms.

Yes, but those words [referring to 'rights'] were always difficult to understand. I normally use other words... it is like "politics." I remember at school they always said "everything is politics, everything is politics," and to me it sounded so... like, I do not know...

Victim, Female, 18 years old¹⁰⁷ (Interview, 03.02.14)

¹⁰⁶ The Victim had separated at the time of the second interview, although they still worked together in a sweatshop they jointly owned on the first floor of their house. They had 2 children less than 18 years of age.

¹⁰⁷ The Victim lived with the accused by the time of the second interview. She had, however, been separated the first two months after filing the first complaint.

Informing people of their options available to seek for help has a snow-ball effect. Victims were asked if they had the chance to share the information they received with other women facing domestic violence, and almost everyone answered positively. In most cases, Victims could share with friends or acquaintances and recommended them to submit a complaint, even when recognising that it was not an easy process.

I told the lady that it is not easy, but it is not impossible either. I told her that it is something for yourself. And then, she said ‘yes, I will do that’ [referring to submit a complaint]. That is what she said, then, I do not know [what she actually did].

Victim, Female, 42 years old¹⁰⁸ (Interview, 24.07.13)

Time was the main element that Victims mentioned as making the process “not easy.” Victims expressed having to spend too much time at the legal offices (“4 hours” “an entire morning”) and this complicated their daily activities. The main factors mentioned as making their daily activities complicated were the children, because Victims needed to leave them alone, with a friend, family member, or a neighbour, or to be back at certain time in order to pick them up from school. Another factor that also played a role was employment. For those Victims who were self-employed, they needed to miss half a day of work, and that meant half a day of loss of income. For those who were employees, they needed to ask for a morning off, and in some cases this meant to disclose to their employers about the problems they were facing. Some Victims expressed that they used days of vacation in order to avoid asking their employers.

2. Conflict Resolution

Victims were asked what type of conflict resolution they were seeking. A closed-ended question, that included a final opened option, indicated that a majority of the interviewees wanted the other party not to bother them any longer. The second most selected options were to have the chance to talk to the other party, to have the other party understand how they felt, and to obtain a separation/divorce. Victims never chose as an option to receive an apology nor to have the other party convicted by the courts.

¹⁰⁸ The Victim had separated at the time of the second interview, although they still worked together in a sweatshop they jointly owned on the first floor of their house. They had 2 children less than 18 years of age.

From the group of Victims that answered that they wanted the other party not to bother them any longer, the way they resolve their conflict differs. Within a six-months-period of the first interview, Victims were contacted again and asked to what extent they reached that solution. In some cases, to avoid being “bothered” by the other party, Victims decided to separate and where able to confront the partner and express their decision. Other cases showed that the intervention of the judicial system was, in the short term, intimidating for the abuser, and this developed in an action from their part, such as starting to attend programs for aggressive husbands or programs to deal with addictions. Other Victims indicated that they were not bothered any longer because both parties decided to continue their own path, and the judicial system served as a mediator to notify the accused about the Victims’ decision (this was the case mostly when facing harassment and between couples with short-term relations). These Victims expressed that as long as the other party stayed away from them, and as long as they did not contact the accused again, their solution was achieved. In cases of Victims that continued living with the accused, they perceived they were partially no longer bothered after having had access to the legal offices. Victims however mentioned that the solution has to come from both parties, and mentioned that to achieve that solution the accused needs to change the behaviour and if this did not happen, they need to separate from the accused. Most Victims that were visiting psychologist, regardless if they were living with the other party or not, recognised that the solution of their conflicts depended on themselves, and on what they wanted for their lives.

IV. CONCLUSION

This paper conveyed the idea that legal reforms and legal offices can legally empower those who accessed the judicial system. To understand this idea, legal empowerment was studied at a normative, institutional, and individual level, with data collected from the normative framework and from Chief Operators, Service Providers and Victims.

The normative level presented how the Argentine legal framework addressed four guiding rights considered necessary to legally empowered Victims. Those rights were: right to access to justice, right to a remedy, right of women to live free of violence and the right to democratic participation. The normative framework showed a change in paradigm on the approach to access to justice, conflict resolution and the role played by Victims in the

process. International law showed to broaden the extent in which basic rights are recognised in the Argentine Constitution and also served as guidance and inspiration for a tailor-made federal regulation directly addressed to Victims. Tailor-made regulations, such as Law 26485, was introduced in this paper to describe new tendencies on how laws can have a comprehensive approach to one specific problem and how this law can influence the implementation of public policies. The new CCP was finally described with its new approach on conflict resolution and on the role of victims in the process.

The paper has gone beyond the classical legal analysis to include an institutional and individual level of analysis. These two levels gave life to the letter of the law and allowed to consider another source of the law, which included perception of those who design and provide the service within the judicial system and those who make use of rights. The institutional level introduced the reasoning and motivations of Chief Operators when designing the institutional set-up of the Office. These interviews provided a clear imprint on access to justice and ways to assist Victims through the process and along their conflicts. OFAVyT was then introduced as a specific strategy to address the points mentioned before, and hence, perspectives of Service Providers were introduced. These data served to understand how Service Providers perceived the role of awareness of rights for Victims in solving their conflicts, and the way the Office and the judicial system is beneficial for conflict resolution of Victims. The voice of Victims who actually experienced the legal system was finally presented in the paper to understand how the institutional set-up and the current legal framework legally empowered them.

The analysis of the data collected helped to reflect on the interplay of laws, offices, providers and users. Laws and offices have shown to be doors of optional opportunities for Victims. By the time Victims arrived to the judiciary, the conflict was already formalised in a complaint. The Office created OFAVyT as a way to assist Victims, and both Victims and OFAVyT manifested that the main advantage the Victims received from the assistance was in terms of being heard, and in terms of referrals to receive emotional support. The formality of the judicial system was perceived almost as an advantage of a way to structure the problem, however, not as a process of becoming more involved in the resolution to the conflict. Efforts made by the Office towards increasing the right awareness of Victims, and hence, promoting democratic participation, were not perceived by Victims, because from the

interviews, Victims do not translate their problems into judicial problems after having accessed to the judicial system, nor they speak in terms of possessors of rights.

The strategically option of having more channels of access to justice was applied by the Office. Victims, however, did not perceive this as an advantage, and most of them referred to the police as the place they would still go (or recommend someone else to go) if facing another aggressive situation. In view of this, the study can claim that people need time to adapt to new set-ups, and hence, the question to assess is if it is worthy to allocate the resources to changing the spontaneous reaction of people (i.e., from going to the police to going to another point of access) or if those resource should be allocated to improve the services already used by the population (i.e., police stations). At the same time, the comprehensive approach used by the legal offices, such as OVD and OFAVyT, was perceived by Victims as beneficial because they contemplated the emotional support. This support created a feeling of empowerment to overcome the conflict. Similarly, most Victims that were guided to start a physiological support were able to perceive their responsibility in the problem and in getting away from the problem. The paper can affirm that coordination amongst different sectors is needed in order to improve people's use of their right to access to justice, right to a remedy, right of women to live free of violence, and the right to democratic participation. All these rights cannot be addressed only by the judiciary, and Victims have shown that timely and accurate referrals can make a difference.

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